IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8166 OF 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARAD PRAVINSINH ROOPSINH

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 8166 of 1999

MR. R.C. JANI for Petitioner

MR. M.S. RAO, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

MR. R.A. MISHRA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 26/03/2004

ORAL JUDGEMENT

1. By this petition, the petitioner has prayed that the respondents be directed to exhaust the Select List

prepared pursuant to the advertisement dated 28th February, 1991, which, according to the petitioner, was in existence on the date of filing of the petition i.e. 15th October, 1999.

2. The facts of the case are that respondent no.2, Secretary, Gujarat Panchayat Service Selection Board, Ahmedabad, gave an advertisement on 28th February, 1991 for the post of Talati-cum-Mantri for District:Kheda for 27 posts. A copy of the advertisement is placed on record at Annexure-C (page 18). From the advertisement, it is clear that in all, 27 posts of Talati-cum-Mantri were advertised, of which fourteen were marked for General category, two were reserved for Scheduled Caste category, six were reserved for Scheduled Tribe category, three were marked for Socially and Educationally Backward Class category and two were reserved for physically handicapped persons. The petitioner is claiming to be a physically handicapped person and to substantiate his claim, he has produced a certificate dated 18th July, 1988 issued by the Superintendent and Civil Surgeon, Civil Hospital, Nadiad, stating that, `the petitioner suffers from residual polimyelibis right lower limb'. It is contended on behalf of the petitioner that the petitioner applied for the post of Talati-cum-Mantri in response to the said advertisement. He passed through the process of selection successfully and his name was placed at Serial No.20 in the Select List; that this was intimated to the petitioner by a communication dated 2nd July, 1992, a copy of which is annexed at Annexure-A to the petition. The respondent no.1-State of Gujarat, Secretary, Rural Housing and Rural Development Department, Gandhinagar, who informed the petitioner that as there is ban on recruitment to the extent of 10% of vacancies, the petitioner cannot be appointed. These facts are stated in paragraph-3.2 of the memo of the petition and to substantiate the same, a copy of letter dated 17th July, 1997 of Panchayat Rural Housing and Rural Development Department is produced at Annexure-B. On perusal of the same, it is noticed that the said letter is addressed to one Mr.Dodia Dilipsinh Prabhatsinh and not to the petitioner. This Mr.Dodia Dilipsinh had approached this Court by filing Special Civil Application No.7323 of 1997. The said Special Civil Application No.7323 of 1997 was decided by this Court (Coram: S.K.Keshote, J.) by judgement and order dated 30th June, 1999. It is only after the said judgement having come to the notice of the petitioner, the petitioner has approached this Court by way of this petition. There is no letter written by the petitioner to respondent no.1 and similarly, there is no intimation sent to the

petitioner. To that extent, the averments made in paragraph-3.2 are not borne out from the record.

3. The petitioner has based his entire case on the fact that in Kheda District, appointment was denied to the said Mr.Dilipsinh Prabhatsinh Dodia on the ground of there being ban to the extent of 10% as per letter dated 17th July, 1997 (Annexure-B to the petition), whereas in Bharuch District, where also an identical advertisement was issued by respondent no.2 in the year 1990 (a copy of which is produced at Annexure-C, page 17), pursuant to which, a Select List was prepared and was published on 28th November, 1991, a copy of which is annexed at Annexure-D, page 19, consisting of 65 names though the advertisement was for 45 posts only was granted sanction by respondent no.1 vide letter dated 22nd April, 1997.

4. It is the case of the petitioner that the authorities did not enforce ban to the extent of 10% on recruitment in Bharuch District. It is contended that if a similar treatment was given in Kheda District also, the petitioner would have got appointment as his name appeared at Serial No.20 in the Select List against 27 vacancies. Except this bald statement, no details are given in support of the contention to substantiate the same. It is not mentioned as to what were the total number of posts, of which, how many posts were required to be kept vacant in view of 10% ban. The information, which is placed on the record of this case, is that on 12th April, 1990, an advertisement was issued for the recruitment of Talati-cum-Mantri in District:Bharuch and the vacancies were 45 in number. Against that, a Select List consisting of 65 candidates was prepared and 8 candidates were kept on the waiting list and in the year 1997, the Government granted permission to appoint candidates, whose names appeared in the Select List at Serial Nos.14 to 65.

5. On the basis of the aforesaid information, it is not possible for this Court to hold that the authorities did not implement 10% cut in Bharuch District, more so, in light of the averments made by Mr.J.U.Gandhi, Under Secretary, Panchayats Rural Housing and Rural Development Department, Gandhinagar, in his affidavit dated 17th November, 2003, wherein he has stated that:

> "... ... ...I further say and submit that in Bharuch there were vacancies over and above deduction of 10% vacancies hence Bharuch district has been permitted to fill up these vacancies. In this way Bharuch district has no relevance

with Kheda district".

Besides, it is also required to be taken note of that the advertisement, on the basis of which the petitioner is seeking appointment in the year 1999, was issued on 28th February, 1991, and the Select List was prepared on 2nd July, 1992, which was to be operative for one year, but then, was continued upto 30th June, 1997 as per Resolution dated 6th December, 1998. The petitioner has approached this Court on 15th October, 1999, though it is not stated in so many words, but then, (from the fact that a communication is addressed to the petitioner of other Special Civil Application No.7323 of 1997 Dodiya Dilipsinh Prabhatsinh, Annexure-B to the petition), it is borne out from the record very clearly that the petitioner was motivated to file this petition only after having learnt about the decision of this Court (Coram:S.K.Keshote, J.) dated 30th June, 1999. Otherwise in the matter of advertisement of 1991, Select List of 92, after having waited for long seven years, to approach this Court with a prayer that the respondents be directed to exhaust the Select List is a matter, which, by any standards is barred by delay and laches.

6. Mr.M.S.Rao, learned AGP, and Mr.R.A.Mishra, learned Advocate appearing for the District Development Officer, Anand District, submitted that the petitioner, having chosen to wait for the result of the petition filed by another person and having come to know that the result has come in favour of the petitioner, has approached this Court by filing the present petition and, therefore, granting any relief to such a petitioner will set a wrong precedent. If at all the petitioner was aggrieved, then, he should have approached this Court well in time. But then, the course adopted by the petitioner, is required to be discouraged for the simple reason that if this petition is entertained tomorrow, there can be another petition saying that he was waiting for the result of this petition and having come to know the result, of course, he is favourable approaching this Court.

7. Mr.R.C.Jani, learned Advocate for the petitioner, submitted that the earlier petition was allowed by this Court only on the ground that the respondent authorities had acted discriminately in the matter of giving appointments in one district and denied in another. He further submitted that the said judgement of the learned single Judge is endorsed by the Division Bench of this Court in Letters Patent Appeal No.1479 of 1999, by judgement and order dated 6th August, 2003 (this Court is

party to that Division Bench).

8. In the considered opinion of this Court, both these matters are independent of each other and have nothing in common. Mr.R.A.Mishra, learned Advocate, who appeared for the District Development Officer, in both the matters submitted that there is an additional ground on which this matter cannot be compared with the earlier one. In the earlier matter, the petitioner had produced the correspondence made by him with the authorities by which he kept the issue alive and then approached this Court well in time, that is, during the period in which the Select List was operative. He submitted that in the present case, the petitioner had never made any correspondence with the authorities otherwise he would have placed on record the relevant document to show that he had represented his case before the authorities. Not only that, even to contend that he is denied appointment on account of 10% cut, he has relied upon and produced a document addressed to somebody else and that too, without mentioning this fact. He emphatically submitted that granting any relief to this petitioner will set a wrong precedent and will encourage others to adopt similar course of waiting for the result of a litigation and approaching the Court only after the result of that litigation is found favourable.

9. In view of the aforesaid discussion, this Court does not find any substance in this petition, hence, the same is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
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